



***MONTANA LEGISLATIVE
ECONOMIC AFFAIRS
INTERIM COMMITTEE REPORT***

MONTANA RAIL SERVICE COMPETITION COUNCIL
Report date: September 2006

MEMORANDUM

TO: Rep. Jim Keane, Chair
Montana Legislative Economic Affairs Committee
State Capitol, Helena, MT 59620

FR: Mike O'Hara, Chair
Montana Rail Service Competition Council
State Capitol, Helena, MT 59620

I am happy to provide to the committee a report on the activities of the Rail Service Competition Council (RSCC) to this point. As you know, the statute calls for the development of a comprehensive and coordinated plan for rail service competition. The council has determined that the development of that plan will take us beyond the beginning of the 2007 Legislature. However, we all felt it was more important to do it right than to be in a hurry. We expect to be working diligently on the plan which will be a "work in progress" as rail service competition issues evolve. The report will be publicly available as soon as it is completed.

In the meantime, we wanted to make sure that your committee was aware of the extensive efforts we have made to gather information upon which to move forward. We hope you find, as we have, that the efforts of the council have been a major step forward in developing plans for better rail competition in Montana to serve the long term economic development needs of the state.

Please review the section of this report related to prospective legislation for the 2007 session. We look forward to working with you, the members of the committee and other members of the legislature to secure needed changes in the statute as we move forward toward its important objectives.

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FORMATION OF THE RAIL SERVICE COMPETITION COUNCIL

FORMATION OF THE MONTANA RAIL SERVICE COMPETITION COUNCIL (RSCC)

As Montana's economy is primarily resource based, rail freight transportation is considered to be a major segment of the infrastructure supporting the state's economy. The vast majority of Montana's production and extractive industries are weight intensive, move in large volumes, and are transported considerable distances. As a result, rail transportation is frequently the most economical or feasible transport mode for shippers. This is true of agricultural products, coal, woodchips and ores.

The spatial economy of the state is dependent on rail services.

1978 Montana Rail Plan

During the 2003 Legislative Session, SB 315 – Rail Freight Competition Study Act introduced by Senator Trudy Schmidt (See Attachment A) – was passed and signed into law. The act provided for a feasibility study to assess conditions affecting rail freight competition in Montana and to analyze possibilities of improving competition. Legislators considered a greater understanding of the economic benefits of rail freight competition and the barriers to rail freight competition to be key in finding ways to promote economic development in Montana. The study was not funded by the Legislature.

After receipt of a USDA Rural Development grant, the Montana Governor's Office of Economic Development commissioned a study by R. L. Banks, a multi-disciplinary consulting firm based in Washington, DC, that provides railroad transportation economic, engineering, operations, negotiations and institutional counsel the firm completed the study which covered the following items:

Part One: Competition Issues

- Historical Background
- Factors Affecting Rail Freight Competition
- Pertinent Railroad Regulation—Federal Law and Regulation of Railroads; Results of Deregulation
- Montana's Use of Railroads—including Montana Ports and Intermodal Facilities, Potential Markets, Opinions of Business Development Officials and Shippers
- Impacts Resulting from Montana's Rail Issues—Limited Wheat Transportation Competition, Rail Transportation of Montana Products, Impact on Montana of Lack of Transportation Competition: Other than Wheat, Other Evidence Regarding Rates and Services, Benchmarks: Comparable Issues in Other States, Impact of Shuttle trains.
- Potential Benefits of Improved Rail Service on Economic Development—Today's Negative Impacts, Factors Other than Competition, Benefits of State-Owned Infrastructure

Part Two: What Can Be Done

- Potential Actions to Improve Rail Freight Competition in Montana—Surface Transportation Board, Federal Legislation, Montana Actions
- Advocacy Activity
- Other Considerations

Some of the rail system overview statistics in the report showed the following:

- Montana Railroad Route Miles in 2005: 3,236; Montana Railroad Route Miles in 1982: 5,126
- Percent of Montana Railroad owned by BNSF: 94.2%
- Montana Rank nationally in percent of rail system owned by Class 1 Railroad: 1
- Montana 2002 Carload Statistics
 - * Originated 346,858
 - * Terminated: 55,617
 - * Bridged: 1,201,190

The study delineated major factors affecting Montana businesses that rely on rail:

- Limited rail competition
- Relatively small transportation market especially for inbound movements
- Montana's geographic position and distance from more robust markets on the West Coast and in the Midwest
- Staggers Rail Act emphasis on financial health of the railroads, and the interpretation of Staggers by the Interstate Commerce Commission and Surface Transportation Board
- Limited bulk commodity transportation options other than rail
- Class 1 railroads are operating at or near capacity

These findings were reviewed by a committee consisting of Whiteside and Associates, the Governor's Office of Economic Development and the Montana Departments of Agriculture, Commerce and Transportation. The group recommended that a Rail Service Competition Council be formed to implement the findings of the R.L. Banks report. As a result of that recommendation, House Bill 769, the Rail Service Competition Council Act, sponsored by Representative George Golie, was introduced, passed and signed into law during the 2005 Legislative Session (See Attachment B).

The legal makeup of the RSCC is delineated in Attachment B of this report. The specific members of the RSCC are shown on page 13 of this report. The responsibilities of the RSCC are found on page 12 of this report.

RAIL SERVICE COMPETITION COUNCIL WEB PAGES



GOVERNOR BRIAN SCHWEITZER

Contact Us**Rail Service Competition Council (RSCC)**

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[RSCC Members](#)[eCalendar](#)**RSCC Home****Next Meeting**

Sept. 27, 2006

Meeting Materials

August 14, 2006
June 28, 2006
March 16, 2006
January 19, 2006
December 20, 2005

RSCC Reports**RSCC Resources****Other Boards & Councils**

Rail Service Competition Council (RSCC)

The rail service competition council shall perform the following duties:

- (a) promote rail service competition in the state of Montana that results in reliable and adequate service at reasonable rates;
- (b) develop a comprehensive and coordinated plan to increase rail service competition in the state of Montana;
- (c) reevaluate the state's railroad taxation practices to ensure reasonable competition while minimizing any transfer of tax burden. The reevaluation of the state's railroad taxation practices should include but is not limited to a reevaluation of property taxes, taxes that minimize highway damage, special fuel taxes, and corporate tax rates;
- (d) develop various means to assist Montanans impacted by high rates and poor rail service;
- (e) analyze the feasibility of developing legal structures to facilitate growth of producer transportation investment cooperatives and rural transportation infrastructure authorities;
- (f) provide advice and recommendations to the department of transportation on the department's activities under 60-11-113 through 60-11-116;
- (g) coordinate efforts and develop cooperative partnerships with other states and federal agencies to promote rail service competition; and
- (h) act as the state's liaison in working with Class I railroads to promote rail service competition.

The council shall cooperate with and report to any standing or interim legislative committee that is assigned to study or has oversight duties for rail service competition issues.

The council must be compensated, reimbursed, and otherwise governed by the provisions of 2-15-122.

The council is attached for administrative purposes only to the governor's office, which may assist the council by providing staff and budgetary, administrative, and clerical services that the council or its presiding officer requests.

Staffing and other resources may be provided to the council only from state and nonstate resources donated to the council and from direct appropriations by each legislature.



GOVERNOR BRIAN SCHWEITZER

Contact Us

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Rail Service Competition Council

Reports

[Montana Taxation of Railroads](#)

[Montana Rail Overview](#)

[White & Briefing Paper For Governor's Schweitzer's Meeting
With Vice Chairman Doug Buttrey, STB](#)

[Surface Transportation Board \(STB\) Notice](#)

[STB Timetable for Class Exemption Proceedings](#)

[52 Car Wheat Rail Rates to PNW](#)

[U.S. Westbound vs Canadian Westbound Wheat 50+car
Revenue/Variable Cost Feb. 2005](#)

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Rail Service Competition Council

Resources

[Rail Freight Competition Study](#)- Montana Department of Transportation

[Rail Service Competition Council MCA 2005](#)

[Senate Bill 919 - Railroad Competition Act of 2005](#)

[Moore to Lewistown Rail Abandonment](#) - Surface Transportation Board Decision

[BNSF to refurbish Fort Benton rail route](#) The BNSF Railway Co. will invest \$5 million to \$8 million in its Great Falls-to-Fort Benton branch line to allow for construction of one or two high-speed "shuttle loader" elevators.

QUALIFICATIONS AND APPOINTMENT OF COUNCIL MEMBERS

Section 1, MCA 2-15-246 provides that the Rail Service Competition Council shall perform the following duties:

- (a) promote rail service competition in the state of Montana that results in reliable and adequate service at reasonable rates;
- (b) develop a comprehensive and coordinated plan to increase rail service competition in the state of Montana;
- (c) reevaluate the state's railroad taxation practices to ensure reasonable competition while minimizing any transfer of tax burden. The reevaluation of the state's railroad taxation practices should include but is not limited to a reevaluation of property taxes, taxes that minimize highway damage, special fuel taxes, and corporate tax rates;
- (d) develop various means to assist Montanans impacted by high rates and poor rail service;
- (e) analyze the feasibility of developing legal structures to facilitate growth of producer transportation investment cooperatives and rural transportation infrastructure authorities;
- (f) provide advice and recommendations to the department of transportation on the department's activities under 60-11-113 through 60-11-116;
- (g) coordinate efforts and develop cooperative partnerships with other states and federal agencies to promote rail service competition; and
- (h) act as the state's liaison in working with Class I railroads to promote rail service competition.

MONTANA RAIL SERVICE COMPETITION COUNCIL—CURRENT MEMBERSHIP
Qualifications and Appointment Date

<p>**Carla Allen Knowledge of Class II Railroads Denton Term began: 9/7/2005</p> <p>Evan Barrett Chief Business Development Officer Helena Term began: 7/1/2005</p> <p>Larry Bonderud Knowledge of Trucking Industry Shelby Term began: 9/7/2005</p> <p>Dan Bucks Revenue Director Helena Term began: 7/1/2005</p> <p>William Fogarty Knowledge of Class I Railroads Anaconda Term began: 9/7/2005</p> <p>***Ken Hansen Legislator, Legislative Appointment Harlem Term began: 7/1/2005</p>	<p>Russell Hobbs Knowledge of Wood Products Industry Transportation Columbia Falls Term began: 9/7/2005</p> <p>Jim Lynch Transportation Director Helena Term began: 7/1/2005</p> <p>***Tom McGillvray Legislator, Legislative Appointment Billings Term began: 7/1/2005</p> <p>Doug Miller Knowledge of Mineral Industry Transportation Troy Term began: 9/7/2005</p> <p>* Michael O'Hara, Chair Knowledge of Farm Commodity Transportation Ft. Benton Term began: 9/7/2005</p> <p>Nancy Peterson Agriculture Director Helena Term began: 7/1/2005</p>
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* Michael O'Hara elected as Chair

** Carla Allen elected as Vice Chair

***Rep. McGillvray and Sen. Hansen appointed by Rep. Jim Keane, Chairman of the Economic Affairs Interim Committee.

Note: Appointment schedule shows when terms began but not when terms end. The statute failed to set the time frame of terms. That will have to be rectified by passage of legislation in the next session.

MONTANA RAIL SERVICE COM- PETITION COUNCIL ACTIVITIES AND PROGRESS TO DATE

ACTIVITIES AND PROGRESS TO DATE**July–September 2005 RSCC Members Appointed**

- *Ex officio* members of the RSCC were on board the Council on July 1, 2005, the effective date of the act. The other appointed members meeting the qualifications outlined by statute were appointed on September 7, 2006. Note: Appointment shows when terms began but not when terms end. The statute failed to set the time frame of terms. That will have to be rectified by passage of legislation in the next session.

October 2005

- At the request of RSCC member Evan Barrett, A white paper and briefing paper for Governor Schweitzer's meeting in Big Sandy and Scobey with Vice Chairman Doug Buttrey, Surface Transportation Board was compiled by Whiteside and Associates. This 23 page report is available on the RSCC website at http://rscclt.gov/docs/White_Paper_Meeting_10_05.pdf and summarizes the current rail situation in Montana.

December 16, 2005

- Governor Schweitzer met with the Vice President of the Surface Transportation Board, RSCC members and agriculture producers in Big Sandy and Scobey.
- Producers articulated problems faced with uncompetitive rail rates that are paid to perhaps the most profitable leg of BNSF service in the nation.

December 20, 2005 first RSCC meeting held

- Michael O'Hara elected as Chair; Carla Allen elected as Vice Chair
- Presentation by Dick Turner, Bureau Chief Montana Department of Transportation on the history of rail and transit in Montana. The presentation included slides from Whiteside and Associates regarding shipping rates and how Montana rates compare with the rest of the nation.

January 2006

- Governor Schweitzer and members of the RSCC met with Great Falls and Helena "rails to trails" representatives relative to converting the BNSF Great Falls to Helena line into a trail. They also met with a group of land owners and rail enthusiasts who were in opposition to such a change. The Schweitzer administration has taken a position that any rail that can be saved should be and that a trail should be a last resort to save the corridor.

January 19, 2006 RSCC Meeting in Helena

- RSCC members were updated on the Great Falls to Helena line status by Jim Lynch, Montana Department of Transportation Director; BNSF has no intention of abandoning the line.
- Nancy K. Peterson, Director of Montana Department of Agriculture, updated the Council on BNSF rate adjustments: analysis indicated the rate adjustments will remain virtually the same.
- RSCC members determined to gather additional information before developing a document that will drive the actions of the council.

March 16, 2006 RSCC Meeting in Helena

- A Legislative intent report was given by Rep. Tom McGillvray who reiterated the need for the Council to develop a strategic plan as well as the importance of the council's role in representing the captive shippers of Montana on a state and national level.
- Two separate conference calls were held with representatives from North and South Dakota to provide a history of the rail competition situation in these states. South Dakota reported on short line operations running on a BNSF line no longer in use. North Dakota is pursuing a rate case and reported on the timeline, cost and transferability of that case.
- Overview of the rail situation in Montana was provided by Montana Department of Transportation Director Jim Lynch. This report is online at <http://rscclt.gov/reports.asp>.
- Council members reviewed the Interstate Commerce Commission, Staggers Act and Surface Transportation Board abandonment and de facto abandonment
- Railroad taxation briefing provided to the RSCC by Dan Bucks, Larry Finch and Kory Hofland of the Montana Department of Revenue. This report is available online at <http://rscclt.gov/reports.asp>.
- Governor Schweitzer updated the RSCC members regarding meetings with the Surface Transportation Board (STB) and the STB's lack of action taken to protect captive shippers.
- RSCC members were updated on issues and events concerning the Union Pacific, Canadian Pacific, Montana Rail Link, BNSF, Central Montana Railroad, Watco and on Captive Shipper Day in Washington DC.
- Nancy K. Peterson reported on meeting with STB Chairman Buttery: they flew the Helena to Great Falls line and proceeded to a meeting with Governor Schweitzer and shippers in Denton, Montana. Members of the council also attended.
- RSCC was authorized to send a letter to STB expressing its concern on the abandonment proceedings for the Lewistown rail line by BNSF.

ACTIVITIES AND PROGRESS TO DATE**April, 2006 Meeting in Lewistown and Letter to Surface Transportation Board**

- A video conference meeting with Lewistown/Fergus County local officials and members of the RSCC was held to review the issue of abandonment proceedings of the Moore to Lewistown Rail by BNSF. As a result of that video conference and the previous RSCC meeting, a letter was sent to Douglas Buttrey, Surface Transportation Board, to request that the line not be abandoned or acquired by a short line operator. See letter Attachment E. At the request of the Lewistown City Council and the Fergus County Commission, the RSCC eventually dropped its objections to this abandonment because of the arrangements being worked out with the local governments and BNSF.

June 28, 2006 RSCC Meeting; Conference Call

- Whiteside and Associates was approved for a contract to provide Technical Assistance to the RSCC.
- As Adam deYong, who was providing staff assistance for the RSCC, was promoted to work with the Work Innovation in Regional Economic Development (WIRED) program, Montana Economic Development Services (MEDS) was awarded a contract to provide administrative support for the RSCC.
- It was reported to the RSCC that Governor Schweitzer talked to James Young of the Union Pacific Railroad urging UP to continue to provide service to Montana at Silver Bow (Port of Montana). Mr. Young reportedly responded positively.
- The RSCC was updated regarding the Tongue River Railroad and its relationship to the Otter Creek Tracts.
- A letter was written from the Council to Union Pacific to continue to provide service to Montana at Port of Montana Butte. Mr. Young reportedly responded positively. See letter Attachment F.

August Union Pacific Meeting Held in Butte

- Following Governor Schweitzer's call to Union Pacific, a meeting was held in Butte to encourage UP to remain in Montana. George Paul, Director of the Port of Montana in Butte thanked the Governor and the Governor's Office of Economic Development, the entire Butte legislative delegation as well as the Council for actively supporting the Port of Montana and becoming involved in the UP issue. As a result of the meetings with the above mentioned officials and UP representatives, UP expressed great appreciation for the collective message they received and decided to remain in Montana. The Port of Montana is moving forward and developing a strategy to create more business opportunities for the area for UP service.

August 14, 2006 RSCC Meeting in Shelby at the Port of Northern Montana

- It is common knowledge that costs are increasing, but there are no solid numbers in place for measurement purposes. The RSCC commissioned Whiteside and Associates to develop a survey to substantiate the following: 1. The shipper's experience during this harvest; 2. Cost of transportation as producers haul farther and farther to elevators and the cost to the highway system to handle these loads.
- Terry Whiteside of Whiteside and Associates gave a detailed presentation on Determining Parameters for Competition Analysis, provided a starting-point outline to promote rail competition in Montana and suggested six future strategies for transportation in Montana. This presentation is available online at <http://rscclt.mt.gov/presentation081406.ppt>
- As a result of Terry's presentation, two RSCC subcommittees were formed. The subcommittees will review Terry's questions for the survey mentioned above:
 - * Purpose(s) of the Taxation Subcommittee: Evaluate state's taxation practices to ensure reasonable competition while minimizing any transfer of tax burden to shippers or producers. Include goals, objectives and strategies. Members include: Dan Bucks, Rep. Tom McGillvray, Bill Fogarty and Carla Allen.
 - * Purpose(s) of the Transportation Subcommittee: To develop RSCC strategies that will be utilized to develop and pursue joint projects with transportation providers and transportation users that provide for a gain in capacity, increased flexibility and deliver increased choices to transportation consumers of the Montana transportation system. The idea is to provide a benefit to all Montana industries. The work of this Committee will include development of goals, objectives and strategies that meet with goals of HB769. Members include: Russ Hobbs, Doug Miller, Sen. Ken Hansen, Mike O'Hara and Evan Barrett.
- BNSF spokesperson Barbara Ranf reported the results of public meetings held in Wolf Point, Havre and Great Falls. Barbara said BNSF received good feedback and is planning additional forums. BNSF needs to build understanding with agriculture producers and improve communications. Regarding the status of the Great Falls to Helena rail and based on a study conducted in 2005 that indicated the potential for Canadian traffic in the future, BNSF decided to not abandon that section of rail at this time. BNSF has committed to work with the STB regarding the fuel charge hearing. Barbara offered to present a formal presentation the issue in the future.
- The RSCC Members and the public in attendance toured the Port of Northern Montana facilities.

NEXT MEETING: SEPTEMBER 27, 2006 PORT OF MONTANA, BUTTE

POTENTIAL LEGISLATIVE
ACTION REGARDING RAIL
SERVICE COMPETITION
COUNCIL FOR 2007 SESSION

POTENTIAL STATE RSCC LEGISLATIVE ACTION FOR 2007 SESSION**Administrative Location of Council**

The Governor's Office would like legislation in which the Council is transferred to the Department of Transportation for administrative support. The Governor's Office generally likes to have program functions with a department rather than the Governor's Office. This change would not alter the nature or activities of the council except for the attachment for administrative purposes.

Terms of Council Members

In the RSCC statute, terms were not established for Council members. In the next session, the statute should be amended to provide for revolving terms and phase them in as is typically done.

Both changes referenced above could be made within the same bill.

Ongoing Appropriation for RSCC Administration and Activities

RSCC appropriations for this biennium were in HB769 itself when it was passed. The RSCC would like appropriations for the RSCC to be placed in HB2 so funding is an ongoing part of state government.

Council Membership

Rep. McGillvray suggested adding a council member with coal shipping expertise to the council as well. The Governor's Office is taking that under advisement. It may become part of the legislation.

ATTACHMENT A
SB 315
2003 LEGISLATURE

2003 Montana Legislature



SENATE BILL NO. 315

INTRODUCED BY SCHMIDT, BLACK, CALLAHAN, DICKENSON, FRANKLIN, GALVIN-HALCRO,
GOLIE, HANSEN, HARRINGTON, HEDGES, LASLOVICH, MCKENNEY, NELSON, PARKER,
ROUSH, D. RYAN, TASH, TESTER, TROPILA, WITT

AN ACT PROVIDING FOR A FEASIBILITY STUDY TO ASSESS CONDITIONS AFFECTING RAIL FREIGHT COMPETITION IN MONTANA AND TO ANALYZE POSSIBILITIES TO IMPROVE RAIL FREIGHT COMPETITION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, 63 Class I freight railroads competed in the United States in 1976 and today only 8 Class I railroads traverse this country with limited competition and the control of more than 91% of all U.S. rail freight revenue; and

WHEREAS, in 2001 one railroad posted more than 97% of revenue earned in Montana from rail freight movement in and out of the state, as reported to the Public Service Commission; and

WHEREAS, railroads have seen an overall dwindling of their customer base in part because of business decisions linked to competition from other freight transporters; and

WHEREAS, three of Montana's major industries ship bulk quantities of mining, timber, and agricultural products out of state to compete in regional, national, and world markets against products on which pricing may benefit from lower variable costs in part because of competition in freight rates; and

WHEREAS, the Legislature considers greater understanding of the economic benefits of rail freight competition and the barriers to rail freight competition to be a key step forward in finding ways to promote economic development of Montana.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Feasibility study on rail freight competition. (1) The office of economic development, established in 2-15-218, shall, subject to subsection (3), present a report to the 59th legislature, as provided in 5-11-210, concerning the status of rail freight competition and its impacts on economic development in Montana. The feasibility study must address:

(a) impacts in Montana from rail freight competition or lack of competition, including if possible a list of businesses that decided for or against locating in the state as a result of the existence of or lack of rail freight competition;

(b) benchmarks as provided through a comparison of rail freight rates and competition in the region;

(c) an analysis of the benefits of rail freight competition on economic development in Montana;

(d) an analysis of the potential for public or private investment in improved rail freight competition;

(e) proposals for various methods to improve rail freight competition in areas where competition is nonexistent or minimal and an analysis of each method's feasibility; and

(f) analysis of the costs and the benefits of state-owned infrastructure compared with privately owned infrastructure associated with additional rail lines intended to promote greater rail freight competition.

(2) The office of economic development may convene a task force of economists, members of the transportation industry, members of natural resource industries that use various forms of freight transportation to ship products to market, and experts in related fields to provide guidelines for the feasibility study.

(3) The office of economic development shall secure funding from federal and private sources to cover the costs of the feasibility study. If funding is insufficient, the requirements for the study are void.

Section 2. Effective date. [This act] is effective on passage and approval.

END -

ATTACHMENT B
HB 769
2005 LEGISLATURE

2005 Montana Legislature



HOUSE BILL NO. 769
INTRODUCED BY GOLIE, HANSEN, SCHMIDT, SMITH, TESTER, WITT

AN ACT CREATING THE RAIL SERVICE COMPETITION COUNCIL; ESTABLISHING THE MEMBERSHIP AND DUTIES OF THE COUNCIL; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

- Section 1. Rail service competition council.** (1) There is a rail service competition council consisting of the following members:
- (a) the director of the department of agriculture provided for in 2-15-3001;
 - (b) the director of the department of transportation provided for in 2-15-2501;
 - (c) the director of the department of revenue provided for in 2-15-1301;
 - (d) the chief business development officer of the office of economic development provided for in 2-15-218;
 - (e) six people appointed by the governor with the following qualifications:
 - (i) one person with substantial knowledge and experience related to Class I railroads;
 - (ii) one person with substantial knowledge and experience related to Class II railroads;
 - (iii) one person who is a farm commodity producer in the state of Montana and who has substantial knowledge and experience related to transportation of farm commodities;
 - (iv) one person with substantial knowledge and experience in the trucking industry in the state of Montana;
 - (v) one person with substantial knowledge and experience related to transportation for the mineral industry in the state of Montana; and
 - (vi) one person with substantial knowledge and experience related to transportation for the wood products industry in the state of Montana; and
 - (f) two members, one from each political party and one from each house of the legislature, from the economic affairs interim committee established in 5-5-223, selected by the presiding officer of the economic affairs interim committee with the concurrence of the vice presiding officer.
- (2) The rail service competition council shall perform the following duties:
- (a) promote rail service competition in the state of Montana that results in reliable and adequate service at reasonable rates;
 - (b) develop a comprehensive and coordinated plan to increase rail service competition in the state of Montana;
 - (c) reevaluate the state's railroad taxation practices to ensure reasonable competition while minimizing any transfer of tax burden. The reevaluation of the state's railroad taxation practices should include but is not limited to a reevaluation of property taxes, taxes that minimize highway damage, special fuel taxes, and corporate tax rates.
 - (d) develop various means to assist Montanans impacted by high rates and poor rail service;
 - (e) analyze the feasibility of developing legal structures to facilitate growth of producer transportation investment cooperatives and rural transportation infrastructure authorities;
 - (f) provide advice and recommendations to the department of transportation for the department's rail planning activities pursuant to Title 60, chapter 11, part 1;
 - (g) coordinate efforts and develop cooperative partnerships with other states and federal agencies to promote rail service competition; and
 - (h) act as the state's liaison in working with Class I railroads to promote rail service competition.
- (3) The council shall cooperate with and report to any standing or interim legislative committee that is assigned to study or has oversight duties for rail service competition issues.

- (4) The council must be compensated, reimbursed, and otherwise governed by the provisions of 2-15-122.
- (5) The council is attached for administrative purposes only to the governor's office, which may assist the council by providing staff and budgetary, administrative, and clerical services that the council or its presiding officer requests.
- (6) Staffing and other resources may be provided to the council only from state and nonstate resources donated to the council and from direct appropriations by each legislature.

Section 2. Appropriation. There is appropriated up to \$50,000 from the department of transportation's highway revenue account in the state special revenue fund to the rail service competition council for each of fiscal years 2006 and 2007 in order to carry out the duties required in [section 1].

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 2, and the provisions of Title 2, chapter 15, part 2, apply to [section 1].

Section 4. Coordination instruction. If House Bill No. 757 and [this act] are both passed and approved, then [section 1(2)(f) of this act] must read as follows:

"(f) provide advice and recommendations to the department of transportation on the department's activities under [sections 1 through 4 of House Bill No. 757];"

Section 5. Effective date. [This act] is effective July 1, 2005.

- END -

ATTACHMENT C
HB 757
2005 LEGISLATURE

2005 Montana Legislature
HOUSE BILL NO. 757

INTRODUCED BY L. JONES, BLACK, TESTER, BERGREN, PETERSON, BUTCHER, KITZENBERG, WITT, BALES

AN ACT ESTABLISHING THE MONTANA ESSENTIAL FREIGHT RAIL ACT; CREATING A REVOLVING LOAN ACCOUNT; PROVIDING FUNDING FOR THE MONTANA ESSENTIAL FREIGHT RAIL ACT REVOLVING LOAN ACCOUNT; PROVIDING GUIDELINES FOR APPLICATIONS AND ELIGIBILITY FOR A LOAN FROM THE REVOLVING LOAN ACCOUNT; PROVIDING FOR MANAGEMENT OF THE ACCOUNT; AUTHORIZING THE ISSUANCE OF REVENUE BONDS FOR FUNDING THE ACCOUNT; PROVIDING FOR A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502 AND 60-11-120, MCA; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. [Sections 1 through 4] may be cited as the "Montana Essential Freight Rail Act".

Section 2. Purpose. (1) Montana's railroad branch lines provide critical transportation to Montana businesses and communities. These lines are especially important to Montana's agricultural and wood products industries that rely on railroads to transport Montana products to national and international markets. The branch lines are also critical to efforts to increase or expand businesses that process Montana commodities into more valuable products.

(2) A state rail funding program will provide Montana with an important tool to help preserve and enhance Montana's branch lines.

(3) The purpose of [sections 1 through 4] is to provide low-interest loans to railroads, cities, counties, companies, or regional rail authorities for the purposes provided in 60-11-120 to preserve or enhance cost-effective rail service to Montana communities and businesses.

Section 3. Revolving loan account -- statutory appropriation -- rulemaking. (1) There is a revolving loan account to be administered by the department. Any interest or income that is earned by the account and loan repayments must be deposited into the revolving loan account unless revenue bonds are issued to fund a loan, in which case the loan repayments must be deposited in the debt service account. The department may request the board of investments to issue revenue bonds, as provided in [sections 7 through 9], for the purpose of providing funds for a loan.

(2) The department may make loans from the account pursuant to 60-11-120.

(3) Funds in the account that are deposited pursuant to former 49 U.S.C. 1654 must continue to be managed as local rail freight assistance program funds. Any additional federal funds received for local rail freight assistance programs or for railroad projects must be deposited in the account.

(4) There is statutorily appropriated, as provided in 17-7-502, to the department up to \$2 million annually for the purposes of making loans pursuant to 60-11-120.

(5) Loans may not be made if the loan would cause the balance in the account to be less than \$500,000.

(6) The department may adopt rules to implement [sections 1 through 4].

Section 4. Funding for account. Federal funds received for local freight assistance programs under former 49 U.S.C. 1654 in an amount up to \$1.1 million must be deposited in the account established in [section 3].

Section 5. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; [section 3]; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.)"

Section 6. Section 60-11-120, MCA, is amended to read:

"60-11-120. Railroad and intermodal transportation facility loans and grants -- authorization -- eligibility. (1) Money appropriated by the legislature may for the purposes provided for in this section and pursuant to [section 3] must be used by the department of transportation, after deducting the necessary costs and expenses for administering this section, to provide loans and grants for:

- (a) the preservation and continued operation of railroad branch lines identified in 60-11-111; and
 (b) for the development, and improvement, construction, purchase, maintenance, or rehabilitation of:

(i) intermodal transportation facilities;

(ii) branch lines or short lines;

(iii) sidings;

(iv) light density railroad lines; and

(v) rolling stock, including rail cars. Proceeds of all repayments of loans, including interest, made under this section must be deposited in the state general fund.

(2) An owner or operator of a railroad identified in 60-11-111(2) is eligible for a loan or grant under this section if the owner or operator:

(a) undertakes to repair, improve, or replace rail facilities to allow the continued operation of the railroad for local rail transportation service; and

(b) derives revenue from the continued operation of the railroad.

(3) A port authority created under Title 7, chapter 14, part 11, is eligible for a loan or grant under this section for the development or improvement of an intermodal transportation facility under this section if:

(a) the port authority is included in the state transportation planning process as described in 23 U.S.C. 135; and

(b) the intermodal transportation facility purpose for which a loan or grant is sought is integrally related to the railroad transportation system of the state.

(4) Applications for a loan must include:

(a) a financial statement;

(b) evidence of matching funds required pursuant to subsection (5);

(c) an operating or business plan that demonstrates the applicant's ability to repay the funds; and

(d) upon request of the department, an independent feasibility study.

(5) Pursuant to requirements of former 49 U.S.C. 1654, which is providing a portion of the funds under [section 3], rehabilitation projects must be matched with 30% in other funds and new construction projects must be matched with 50% in other funds. The transportation commission, provided for in 2-15-2502, shall establish matching fund requirements for other project categories.

(6) The transportation commission is responsible for determining funding recipients. Recipients must be determined using the guidelines provided in 60-2-110.

(7) The department shall administer the Montana Essential Freight Rail Act with input from the department of commerce, the department of agriculture, and the governor's office.

(8) Funding recipients shall pay the standard prevailing wage on any construction projects or subcontracted construction projects conducted with funds received under this section."

Section 7. Definitions. As used in [sections 7 through 9], the following definitions apply:

(1) "Board" means the board of investments established in 2-15-1808.

(2) "Bonds" means bonds, notes, or other evidences of indebtedness issued pursuant to [sections 7 through 9] as essential freight rail revenue bonds.

(3) "Cost", as applied to any project, means any cost of any part of the project pursuant to 60-11-120.

(4) "Projects" means the acquisition, construction, reconstruction, maintenance, and repair of rail lines.

(5) "Revenue" means the revenue from the operation of a rail line loan repayments and any delinquency charges on loan repayments.

Section 8. Revenue bond debt service account -- deposit of bond proceeds. (1) There is in the debt service fund an essential freight rail revenue bond debt service account. The state treasurer shall deposit revenue as may be pledged to the payment of particular bonds to the credit of the essential freight rail revenue bond debt service account as required by resolution or indenture.

(2) All proceeds of an issue of bonds must be deposited in a separate account in the state special revenue fund, except that any premiums and accrued interest received may be deposited in a separate account in the debt service fund established for that bond issue by resolution or indenture. No more than the principal and interest on the bonds due in any year may be retained in the essential freight rail revenue bond debt service account for the payment of bonds. The remainder of pledged revenue is available for authorized purposes of the department. Money deposited in the separate accounts in the state special revenue fund until spent for project purposes may be pledged and appropriated for the payment of bonds, which are a first lien and prior charge upon the funds, and the funds may be used for payment of bonds to the extent that revenue deposited in the essential freight rail revenue bond debt service account are not sufficient for those purposes.

(3) Interest and investment earnings on the separate accounts in subsections (1) and (2) must be retained in the separate accounts referred to in subsection (2).

Section 9. Authority to issue revenue bonds. The board may issue and sell essential freight rail revenue bonds to make loans to finance the cost of projects, to pay the costs of issuing the bonds, and to provide for reserves, upon recommendation of the department. The bonds must be issued under Title 17, chapter 5, part 15.

Section 10. Codification instruction. [Sections 1 through 4 and 7 through 9] are intended to be codified as an integral part of Title 60, chapter 11, part 1, and the provisions of Title 60, chapter 11, part 1, apply to [sections 1 through 4 and 7 through 9]. -

ATTACHMENT D
RAIL SERVICE
COMPETITION COUNCIL
MEETING AGENDAS

Agenda
Rail Service Competition Council
December 20, 2005

1. Introduction – give a background of your relevant experience.
2. Election of a Chairperson, and other officers if deemed necessary by the council.
3. Discussion of the Councils role and authority
4. Discussion of major rail issues in Montana
 - a. Rail car shortages
 - b. Rail rates
 - c. Briefing on the North Dakota PSC rail case
 - d. Outline the Councils Mission, goal, and objectives
 - e. Adjourn meeting

*Montana Rail Service Competition Council Agenda
State Capitol, Old Supreme Court Chambers
January 19, 2006; 9:00am*

1. Welcome and Introductions – for the Public
2. Budget
 - a. Travel/Lodging
 - b. Per diem
 - c. Consultants
3. Multi-State or National Issues
 - a. ND Rail Rate Case
 - b. Federal Legislation
 - i. Senate Bill 919
 - ii. House Bill – James Oberstar (D) Minnesota
 - c. Source of Federal Funds
 - d. Surface Transportation Board
 - i. De facto abandonment
 - ii. Requiring rail trackage rights
 - iii. Redefining constructive placement
4. State Issues
 - a. Lewistown Abandonment update
 - b. Great Falls to Helena abandonment update
 - i. Rails to Trails
 - ii. Port Authority Option
 1. STB “No Service” classification
 2. Tax free municipal bonds
 - iii. Eminent Domain
 - iv. Cost analysis – if operated by a short line company
 - c. Union Pacific situation
 - d. BNSF Grain Rate Adjustment
 - e. State Rail Construction as a Solution
5. Rail Service Competition Plan
6. Set next meeting date and location
7. Comments from Public
8. Adjourn meeting

RAIL SERVICE COMPETITION COUNCIL
COUNCIL MEETING
AGENDA

Thursday
March 16, 2006

9:00 – 5:00 P.M.
State Capitol

Call Meeting to Order – Chairman O’Hara

Council Members and Audience Introductions

Approval of Board Meeting Minutes – Vice Chairwoman Allen

Minutes of Council Meeting – December 20, 2005

Minutes of Council Meeting – January 19, 2006

Agenda Review/Amendments

Legislative Intent Report – Senator Hansen and Representative McGillvray

Legislative Mandates

Review

Stagers Act

Interstate Commerce Commission

STB abandonment / de facto abandonment

Tax Briefing – Dan Bucks

Issues / Events

Union Pacific

Canadian Pacific

Montana Rail Link

Burlington Northern Santa Fe

Central Montana Railroad

Watco

Yellowstone

Captive Shipper Day – March 9, Washington DC

STB – Buttery visit

Department of Transportation – Jim Lynch

Communication with North Dakota and South Dakota

Exploration of regional strategies and potential alliances

Schedule next meeting

Agenda

Time / Place

Public Comment

Adjourn

RAIL SERVICE COMPETITION COUNCIL
COUNCIL MEETING
AGENDA

Thursday, June 28, 2006 8:00—9:00 AM

Conference call; public can listen in RM 234 State Capitol

Call Meeting to Order

Council Members Introductions

GOED recommendations on Administrative contract

Minutes of Council Meeting – March 16, 2006

GOED recommendation on Technical Assistance contract

5.0 Action Items – Next Council meeting

Agenda

Meeting Date

Meeting Location

Putting out an RFQ for Staff assistance and other contract work

6.0 Public Comments

7.0 Adjournment

RAIL SERVICE COMPETITION COUNCIL
COUNCIL MEETING
AGENDA

Monday
August 14, 2006

10:00am – 4:00pm
Elks Lodge, 137 Main St.
Shelby, Montana

Call Meeting to Order

Roll Call and Introduction of Audience

Approval of Council Meeting Minutes – June 28, 2006

4.0 Technical Assistance Update – Whiteside and Associates

4.1 Proposed survey of shipper issues in central Montana (Mike O’Hara) Potential Action Item

4.2 Determining parameters for competition analysis (Terry Whiteside) Potential Action Item

4.3 Discussion of surface transportation board decision

4.4 Update on Federal Legislation

5.0 Develop Plan – Potential Action Item as per HB 769

2 (b) “develop a comprehensive and coordinated plan to increase rail service competition in Montana”

6.0 Administrative Update - MEDS

7.0 Legislative Update - Potential State Legislative Activity (Evan Barrett)

7.1 Location of Council

7.2 Continuing appropriation for administration and activities

8.0 Rail Updates

8.1 Union Pacific (Evan Barrett)

8.2 Canadian Pacific (Larry Bonderud)

8.3 Montana Rail Link (Evan Barrett)

8.4 BNSF Railway (Barbara Ranf)

a. Results of public meetings

b. Status of Great Falls to Helena rail

8.5 Central Montana Railroad (Carla Allen)

8.6 Watco, Yellowstone, Mission Valley, others

9.0 Next Council Meeting

9.1 Meeting Date and Location (Port of Montana, Butte) Suggested date: September 25th; alternative date: September 27th

9.2 Agenda

10.0 Comments or Issues from Council Members

11.0 Formal Public Comment Period

12.0 Adjournment

** Tour of Shelby Transportation Facilities – Larry Bonderud

ATTACHMENT E
RAIL SERVICE
COMPETITION COUNCIL
MEETING MINUTES

RSCC MINUTES

Note: The minutes from the **first RSCC meeting, held December 22, 2005** is a literal transcription 23 pages in length available on the website at http://rscclmt.gov/docs/2005_12_22_Minutes.pdf

MEETING OF THE Rail Service Competition Council

January 19, 2006 9:00 AM.

Old Supreme Court Chamber
Montana State Capitol

COUNCIL MEMBERS PRESENT: Michael O'Hara – Chair, Carla Allen – Vice Chair, Dan Bucks, Doug Miller, Evan Barrett, Jim Lynch, Ken Hansen, Larry Bonderud, Nancy Peterson, Tom McGillvray, and Bill Fogarty

COUNCIL MEMBERS ABSENT: Russell Hobbs

GUESTS PRESENT: Dick Turner, G Schlaeger, PL Schlaeger, Spook Stang, Richard Owen, Mark Blazer, Steve Sheldon, Greg DeWitt, Errol Rice, Bob Stevens

Chairman O'Hara called meeting to order at 9:15

Budget – A copy of the councils draft budget was given to each member for review. Discussion focused on meeting locations, per diem, and money set aside for consultants. After brief discussion a vote was taken and passed to allow each individual on the council that is eligible for the per diem to choose at each meeting whether they want reimbursed or not.

Multi-State or National issues – A brief discussion and update on the North Dakota rail rate case took place, it was decided that the council should pursue an update from the North Dakota representative at the next meeting. A brief discussion on the pending Federal Legislation occurred. Discussion focused on the intent of the legislation and where it stood in the legislative process. This discussion led into the exploration of Federal funds that may be available to aide Montana in promoting rail competition. Finally, multiple facets of the Surface Transportation Board were explored, including de facto abandonment, requiring rail trackage rights, and redefining constructive placement.

State Issues – There was no update to give on the Lewistown abandonment. Evan Barrett gave a synopsis of the Governor's meeting with the Great Falls and Helena representative of the rails to trails group. It was stated that this group agrees with the council in that any rail that can be saved should be, and that a trail should be a last resort to save the corridor. A discussion was also taken on the ability of a short line rail to run a line at decreased costs compared to a larger class one railroad. Jim Lynch gave an update on the BNSF's position on the Helena to Great Falls line, they have no intention of abandoning the line. Nancy Peterson gave an update on the BNSF rate adjustment, the analysis done on the rate adjustment concurred that rates will remain virtually the same. The council also discussed the best manner in which to take formal position on rail issues within the state. Options included going on record to BNSF and the STB with a letter stating our current position and what our position would be in case of abandonment. Options were also discussed on *de facto* abandonment's. DOT volunteered their services to research the council and states options.

Rail Service Competition Plan – The scope and focus of this plan was discussed, and it was determined that the council should not spend a significant amount of time on developing the plan, at the cost of taking action. It was also determined that more information was needed prior to determining the scope of the plan.

Set Next Meeting Date and Location – The council discussed the location of the next meeting, it was moved that the next meeting be held in Helena on the 16th of March, for the entire day. The council felt that it was important to hold another meeting in Helena, as the meeting will continue to focus on background information and the development of the Rail Service Competition Plan as a document to drive the actions of the council.

Adjournment – Motion of adjournment made and seconded. Meeting adjourned.

Meeting of the RAIL SERVICE COMPETITION COUNCIL

March 16, 2006 9:00 A.M.

Room 152

Montana State Capitol

COUNCIL MEMBERS PRESENT: Carla Allen, Evan Barrett, Larry Bonderud, Dan Bucks, Bill Fogarty, Ken Hansen, Russell Hobbs, Jim Lynch, Tom McGillvray, Doug Miller, Nancy Peterson, Michael O'Hara

COUNCIL MEMBERS ABSENT: All members present. Dan Bucks had other meetings to attend, and therefore Kory Hofland sat in for him as a non-voting Department of Revenue representative.

GUESTS PRESENT: Mark Cole, Kristina Davis, Errol Rice, Greg DeWitt, Dick Turner, Bob Stevens, Mary Whittinghill, George Paul, Steve Sheldon, Richard Owen, Spook Stevens, Howard Nash, Michael Opar, Mary Ann Fiehrer, Gary Schlaeger, Patricia Schlaeger

Chairman O'Hara called the meeting to order at 9:10 AM

Evan Barrett moved to approve the meeting minutes of December and January 19th 2006. The motions were seconded and passed by the council.

Agenda reviewed and changes noted.

Legislative intent report by Tom McGillvray – Comments were made on the importance of developing a strategic plan for the Council to follow, as well as the importance of the council's role in representing the captive shippers of Montana on a state and national level.

Call made to South Dakota representative. Introductions by the council were made. A brief history of the South Dakota situation was given; short line operations began to run on BNSF line that was not in use, under an operating agreement. Two of these operations are profitable, while one other is not. The core line was then sold to BNSF by the state. The State is currently working through the agreements with BNSF; they are currently in the "honeymoon" period of the deal. The State of South Dakota had nothing to do with the DM&E federal funding to build a new rail line.

Department of Transportation presentation: Presentation made by the Director of Transportation, Jim Lynch. The presentation was an overview of the rail situation in Montana.

Reviewed the Interstate Commerce Commission, Staggers Act, Surface Transportation Board abandonment and *de facto* abandonment

Railroad Taxation Briefing given by Dan Bucks, Larry Finch, and Kory Hofland: Introduction given by Dan Bucks on the tax structure in Montana, and how it compares across the nation. Taxation of standing railcar stock was covered by Kory Hofland. There is no tax benefit for parking cars and calling them non-rolling stock. The taxation system is based on two factors, miles traveled within the state and the time it took for the cars to travel that distance. No tax reason determined for parking those cars in Montana. The value is in the enterprise, not in the pieces of that enterprise. Larry Finch gave the presentation on Montana Taxation of Railroads. Part one covered the property taxes on railroads on Montana. The total system value is calculated then Montana allocation factor is used to determine the allocated value to Montana. The Montana allocation factor is determined by the average of five ratios. This value is then allocated across taxing jurisdictions. Questions. Could relative rates charged by taken into the property tax framework? It would have to be dealt with on a corporation with monopoly powers. Dan Bucks believes that it may be possible under the 4R's act to have a tax policy of this nature.

Governor's Presentation to the Council 1:00 PM: He has had it with BNSF claiming that Montana freight rates are the same as freight rates in the mid-West. He demonstrated how this statement is false by comparing actual freight rates from the mid-West with Montana freight rates. He then discussed the past meetings with the Chairman of the STB, and the lack of action they have taken to protect captive shippers. We are dealing with a monopoly and the agency that is supposed to be protecting the captive shippers is not doing its job. Rail freight rates are not correlated to distance traveled or diesel consumed. This disparity in shipping rates is costing Montanan shippers about \$75 million dollars a year. Let it be noted that no one from BNSF was in attendance to hear the concerns of the council or the public.

Call made to North Dakota: Introductions of the Council members. The rate case they are pursuing, the timeline of that case, the cost of the case, and the transferability of that case? Filing a simplified rate case through the ST B. For this case they had to develop a hypothetical railroad to show what competition could do to rates. They believe that the first case to be brought will be substantially more expensive than following cases. Questions, what is your specific case, what shipper? They have not chosen yet, but they have in down to a couple possible shippers, the final announcement will come when the case is announced. Thank you for your help and cooperation.

Issues and Events: The issues and events covered are as follows; Union Pacific update, Canadian Pacific update, Montana Rail Link update, BNSF update, Central Montana Railroad update, Watco update, report on Captive Shipper day in Washington DC by Richard Owen of the Montana Grain Growers Association, and a report on STB Chairman Buttery visit by Nancy Peterson. Richard reported that the meeting went well and that they were able to persuade 3 more senate members to vote for the federal senate railroad bill 919. The bill does have legs and will get a hearing in the commerce committee and should move out, the struggle will come in the house. The event was a strong showing of multiple industries that are affected by the rail situation.

UP – Evan Barrett - Branch line operator is still consideration of taking over UP line to Butte, nothing new has occurred.

CP – Larry Bonderud – Headquartered in Calgary. Larry covered the lines that the CP operates as well as the partners that they work with. To move freight from Canada to multiple ports in the US, the CP would choose to work with the UP. Due to the large profits it is very possible that a large merger could happen in the future.

MRL – Evan Barrett – They are connected on both ends by BNSF, and in the middle as well. They have an interest in additional shipping where ever it is available in Montana. They have maintained that dialog with the State. Howard Nash of MRL, traffic in Montana, they handle around 300,000 units per year. They originate and terminate around 70,000 cars.

BNSF – Larry Bonderud – Members of the board were in Shelby last month to determine how to increase train speeds in the highline area, Shelby and Loral. This may be an opportunity for Montana. The State may be able to play a role in this to help our cause.

CMR – Carla Allen – CMR is proceeding as usual, the Governor stopped in after his meeting in Denton. A history of the line was also given.

Watco – Steve Sheldon - They are a large short line provider who works throughout the nation and with all major railroads. They have been evaluating the short line from Plentywood to Scobey to see what it would cost to repair the line, and what the market for freight on that line could be.

STB Chairman Buttery visit - Nancy Peterson – We hosted Chairman Buttery, flew the Helena to Great Falls line, and proceeded onto the meeting in Denton. The group had an opportunity to look at the issues with this line and the parked rail cars along those lines.

Discussion of Councils Activities to meet Legislative intent: The larger mission here is to be the voice of Montana captive shippers. We should work on a recommendation to the legislature on what this council should do and what it's future direction should be, due to the nature of this issue. We will need to use a consultant to put a plan together, which brings up the question of funding and time available. Funding and information will be the foundation of the development of a long term plan for solving this issue. Identify the things that we can do right now with the resources we have, and then identify what we would like to accomplish in the future and how we will get to those accomplishments.

Next Meeting Scheduled

Time and Place: May 11, 2006 at 9 A.M.

Agenda: Get it out for review on

MEETING OF THE RAIL SERVICE COMPETITION COUNCIL

Wednesday, June 28, 2006 8:00 AM
Conference Call; Public Meeting Room 234
Montana State Capitol

COUNCIL MEMBERS PRESENT OR ON THE CALL: Michael O'Hara, Carla Allen, Larry Bonderud, Evan Barrett, Dan Bucks, Bill Fogarty, Senator Ken Hansen, Russell Hobbs, Jim Lynch and Nancy K. Peterson

COUNCIL MEMBERS ABSENT: Doug Miller, Representative Tom McGillvray

GUESTS PRESENT: Barb Ranf, Mary Whittinghill, Gwen Florio, Morgan Fiehrer and Mike Opar

Chairman O'Hara called the meeting to order. Evan Barrett explained that the conference call meeting was necessary because the regularly scheduled meeting for June 23rd did not garner a quorum. He further apologized for the lack of coordination for this meeting and explained that Adam DeYong, who had been assisting with RSCC as a staff member of the Governor's Office of Economic Development, was promoted to a lead position with the WIRED project in the Department of Labor and Industry. Evan noted that one of the outcomes of the meeting today would hopefully address the issue of needed administrative services for RSCC.

Carla Allen requested a correction to the March 16th meeting minutes. Page 3, Line 18 should be corrected to read "CMR is proceeding as usual" rather than MRL. The motion was made by Nancy K. Peterson to adopt the minutes as corrected. Carla seconded the motion; following discussion, the motion passed without opposition.

GOED recommendation on Technical Assistance contract. Evan Barrett was asked to update the council on pursuing technical assistance services for the RSCC. Mr. Barrett explained that, pursuant to earlier Council directive and his e-mail to the Council the previous week, a limited solicitation for technical service assistance was sent out to a number of railroad consulting firms. One response was received from Whiteside and Associates of Billings. The Governor's Office of Economic Development (GOED) deemed the proposal of Whiteside and Associates to the Request for Proposal to be responsive and noted Terry Whiteside had worked well with the members of the Council previously. Evan Barrett moved that the Council authorize him to proceed to get the contract in place before June 30. The motion received a second from Ken Hansen.

Under discussion and prior to the vote, Evan Barrett said the Council's previous discussion on the need for technical assistance would be provided for under this contract at a cost of roughly \$24,500, approximately 300 hours at \$80 per hour. Mr. Barrett said if more than 300 hours were required, it could be contracted out in the next fiscal year. Nancy K. Peterson and Ken Hansen both commented on previous experience with Whiteside and Associates and felt confident the some of the services required by RSCC could be met through a contract with Whiteside and Associates. Larry Bonderud requested a discussion of the administrative services contract prior to voting on the technical assistance contract.

Following the administrative services discussion (see 4.0 below) Larry Bonderud called for the question; motion passed unanimously.

RSCC MINUTES (continued)

GOED recommendations on Administrative contract. Evan Barrett briefed the Council on two responses received in response to a limited solicitation offering for administrative services the Governor's Office of Economic Development put out on behalf of the RSCC pursuant to his e-mail to the Council the previous week. Montana Economic Development Services (MEDS) and New Horizons responded. New Horizons proposed a cost of the contract to be \$5,500 base, with an additional \$55 per hour. MEDS proposed a total contract amount of \$19,200 at the rate of \$35 per hour. While the New Horizons response proposed a lesser base dollar amount, it did not include all of the activities the RSCC wishes to encompass under the contract. The MEDS proposal was responsive to the full range of services requested by the RSCC including minutes, agendas, all communications before, during and after meetings, follow-up with the press, follow-up administrative work based on meeting outcomes and additional well-rounded services. MEDS also had a very successful track record in providing administrative services to both MEDA (Montana Economic Developers Association) and the Montana Ambassadors.

Larry Bonderud said he had worked with MEDS extensively in the past and noted their competency. Nancy K. Peterson also expressed her support. Mr. Bonderud moved that the RSCC accept the proposal from MEDS, seconded by Carla Allen. The vote passed unanimously.

Action Items – Next Council meeting. (Note: At this time, Jim Lynch joined the meeting.)

The next meeting is to be August 14th, at 10:00am in Shelby. Larry Bonderud will work with Gloria O'Rourke of MEDS to coordinate activities in terms of the meeting. Gloria O'Rourke will be notified to send her contact information to the council and all of those on the extended contact list for RSCC activities. Mike O'Hara asked anyone who had suggested agenda items to send the items to either him or Gloria. He will work with her and the Governor's Office of Economic Development to develop the agenda.

Board Comments.

Evan Barrett commented on the following:

Governor Schweitzer recently spoke with James Young of Union Pacific (UP). Mr. Young indicated UP will maintain their operations with Montana. There had been discussions about selling or leasing the line to a branch line operator. However, the Port of Montana and the Butte Legislators felt it was better to have a Class 1 railroad from the south if possible. The Governor concurred in that assessment and placed the call to urge UP to maintain a presence in Montana

Evan Barrett noted that both UP and BNSF are potential large off-take customers for a coal-to-liquids plant (should a plant be built in Montana) as they are both substantial diesel users. He wanted to acknowledge that such a potential off-take was part of the broader relationship the state had with the two Class 1 railroads.

Regarding the Tongue River Railroad and its relationship to the Otter Creek Tracts, Evan observed that the state was facing a dilemma as the value of the coal may not be high enough without a commitment up front to a railroad and the Land Board is constitutionally required to get best market value of the coal for the school trust, yet a request was being made to offer the coal before the railroad was fully committed to. This is a potentially awkward situation that will come before the Land Board.

Ken Hansen mentioned that BNSF was in the middle of announced meetings being held along the Hi-Line with producers and that Matthew Strong of BNSF from Fort Worth had indicated to him at the Havre meeting that BNSF wanted to keep open the doors of communication.

Public Comments (None)

Adjournment. Evan Barrett moved to adjourn the meeting at 8:45am. The motion was seconded by Larry Bonderud and passed unanimously.

MEETING OF THE RAIL SERVICE COMPETITION COUNCIL**Monday, August 14, 2006 10:00 AM****Elks Lodge, 137 Main
Shelby, Montana**

COUNCIL MEMBERS PRESENT: Mike O'Hara, Carla Allen, Rep. Tom McGillvray, Sen. Ken Hansen, Russell Hobbs, Doug Miller, Larry Bonderud, Evan Barrett, Jim Lynch. **Contract Staff:** Terry Whiteside (Whiteside & Associates) and Gloria O'Rourke.

COUNCIL MEMBERS ABSENT: Nancy K. Peterson, Dan Bucks, Bill Fogarty

GUESTS PRESENT: Steve Sheldon, Patrick Christiaens, Sen. Glenn Roush, Gerald Smith, Barbara Ranf, George Paul, Dennis DeVries, Margaret McGillvray, Mark Cole, Mary Ann Fiehrer, Edith Clark, Gary Aklestad, Jerry Black, Darin Arganbright, Barbara Iverson, Dwaine Iverson, Byron Kluth, Barbara Simonetti, Dick Turner, Jim Sargent, Mark Daniels, Art Adamson, Gary Schlaeger, Patty Schlaeger.

1.0 Call to Order**2.0 Roll Call and Introduction of Audience**

Chairman O'Hara called the meeting to order and expressed appreciation to the Shelby meeting hosts and to the public in attendance. A roll call was taken and it was determined that a quorum was present.

3.0 Approval of Council Meeting Minutes – June 28, 2006

The motion was made by Larry Bonderud to approve the minutes of the June 28th RSCC meeting; Evan Barrett seconded the motion. All voted in favor to approve the minutes.

4.0 Technical Assistance Update – Whiteside and Associates**4.1 Proposed survey of shipper issues in central Montana**

Due to shipping problems in the Triangle area and other areas across Montana during harvest, it was suggested by Chairman O'Hara that the council consider commissioning a survey of producers/merchandisers to quantify these problems.

It was also suggested additionally to commission a survey to ascertain the changes that have occurred in transportation costs from the farm to elevator facilities as the railroad has moved to encourage shuttle facilities resulting in ever more distant hauls. The survey could analyze the average hauling the growers are incurring to get to shipping points and provide for comparison the average hauling incurred prior to the introduction of the shuttle loading facilities. It is common knowledge that costs are increasing, but there are no solid numbers gathered for measurement purposes and public policy discussions. A formal study would provide a factual predicate for the increased hauling and related costs associated with the transfer of grain to ever more distant grain loading facilities by Montana farm producers.

A discussion on the issue determined that the survey would address two separate issues: 1.) the shipper's experience during this harvest and 2.) Cost of transportation as producers haul farther and farther to elevators. The second part of the survey would attempt to ascertain the cost to the highway system to handle these increasingly more distant loads.

It was determined that Whiteside and Associates would conduct the survey and modeling under its current contract. Data could be used from Montana Department of Agriculture, MDOT, MACo, tax roles, and the Surface Transportation Board. Terry Whiteside, hearing the requirements for the first time, thought that depending on information and support already available, the survey could probably be completed within 90 days.

Rep. Tom McGillvray moved to conduct the survey/modeling and to request the services of Whiteside and Associates under the current contract. Carla Allen seconded the motion.

Discussion: Whiteside and Associates will develop the survey and work with RSCC members on the questions contained therein prior to actually conducting the survey. Once the survey/modeling is completed and information has been gathered, the Council will attempt to develop action items based on the data. The motion passed unanimously.

4.2 Determining Parameters for Competition Analysis (Terry Whiteside)

Note: to view the entire PowerPoint presentation and full details visit: <http://www.rscclt.gov/presentation081406.ppt>

Terry reminded the Council of the parameters described in HB 769 for the RSCC to:

- Promote Rail Service Competition in State and
- Develop a comprehensive and coordinated plan to increase rail service competition in MT
 - Taxation, means to assist impacted shippers,
 - Feasibility of legal structure to facilitate growth in producer transportation investment coop & rural transportation infrastructure
 - Partnerships with other states and federal agencies to promote rail service competition
 - Provide advice and recommendations to MT DOT

With these parameters in mind, Terry presented an outline to begin discussion of the RSCC vision and purpose to promote rail service competition in the state:

Work with Montana transportation providers to enhance options and choices
 Build or encourage rail-to-rail competition projects – build outs or build ins
 Develop value added activities and projects which utilize product that traditionally moves over MT transportation system
 Develop projects that provide for competitive uses of MT products off rail or on competitive railroad systems
 Work with MT companies to enhance their ability to provide value added economic development

Terry also suggested six future strategies for transportation in Montana:

1. Explore and develop all rail or truck competitive options
2. Support all efforts at the local, state and federal level to increase choices in rail transportation
3. Support establishment of core rail branch lines and develop methods of financial and shipper support that will serve to minimize public expenditures
4. Develop lines of communication with all major transportation providers that serve Montana
5. Develop methodologies to lower transportation input costs in Montana
 1. Increase competition for use of MT products that move over MT transportation system
 2. Examine Tax rates on railroads and truck lines?
 3. Tort reform for settlements of lawsuits (use extreme care to avoid unintended consequences)
 4. Weight Limits?
 5. Demonstration projects for trucks
 6. Building transportation infrastructure that will lower transportation costs for MT producers and manufacturing
6. Litigate/participate on development of transportation issues
 (transportation corridors, abandonments, ex parte, etc) when necessary

Discussion: It is all about developing choices throughout the transportation arena for the producers to select how they want to move their product.

The RSCC members present decided to create two subcommittees to work with Whiteside and Associates, one on taxation (working with Dan Bucks) and one on transportation to bring recommendations back to the full committee. These recommendations would provide work product for the development of planks for building the required plan. In addition, both committees will contribute to the Survey Questions.

Purpose(s) of the Taxation Subcommittee: Reevaluate state's taxation practices to ensure reasonable competition while minimizing any transfer of tax burden. Include goals, objectives and strategies.

Purpose(s) of the Transportation Subcommittee: To develop RSCC strategies that will be utilized to develop and pursue joint projects with transportation providers and transportation users that provide for a gain in capacity, increased flexibility and deliver increased choices to transportation consumers of the Montana transportation system. The idea is to provide a benefit to all Montana industries. The work of this Committee will include development of goals, objectives and strategies that meet with goals of HB769.

Gloria O'Rourke is to survey via email the RSCC members to obtain names of those willing to serve on the committees.

4.3 Discussion of Surface Transportation Board decisions

Note: Upon Evan Barrett's request, agenda item 4.4 was discussed prior to 4.3.

Terry Whiteside reported on the Surface Transportation Board's Notice of Proposed Rule Making (NPR) for Simplified Standards for Rail Rate Cases. There are three types of rate cases proposed in the new NPR – small, medium and large. The small rate case will utilize a three factor benchmark for adjudicatory purposes. The medium rate cases will utilize a standard called Simplified Stand-Alone Cost (SSAC) that will apply to the majority of non-coal cases. This new standard would take at least 18 months to litigate and there is uncertainty as to method, cost and results of the SSAC.

Most troubling with the new regulations is the fact that the Bright-Line eligibility threshold is well below shipper recommendations. The bottom line is the rate case for small rate cases is so small it, in all probability, will not be applicable to any entity in Montana. This coupled with the estimate of litigation costs will, in all likelihood lead to no small rate cases being filed under the proposed rules. Remember, these are proposed rules and the small rate case rail customers are looking to file joint comments calling for major changes in the threshold of these standards.

The rule making schedule is as follows:

- Sept. 1: Notify STB of intent to participate
- Sept. 29: File opening comments
- Oct. 30: File reply comments
- Dec. 1: File rebuttal comments

Evan Barrett asked Terry to comment on the likelihood that the proposed changes at STB would prove useful to Montana. Terry said in his professional judgment, there is nothing in the new proposed rules that would prove useful for small rate cases from Montana rail customers. No small shipper would file as there is too much uncertainty and the qualifications are so low that no rail customer would see a possible return in a victory that would justify filing a case in the first place.

Terry also reported on an STB Notice of Proposed Rule Making in Rail Fuel Surcharges. The proposed changes would force railroads to tie surcharges more closely to actual changes in fuel costs associated with individual rail movements. Railroads also would be required to file monthly reports disclosing fuel costs, fuel consumption and revenue from surcharges.

The STB also called for abandoning the widely used method of setting fuel surcharges as a percentage of base shipping rates, which vary depending on the level of competition. Instead, the agency proposed requiring railroads to devise an alternative method, such as mileage or combination of weight and mileage.

4.4 Update on Federal Legislation

In addition to the STB activities mentioned above, Terry reported on the two rail competition bills including S 919 with ten cosponsors and HR 2047 with 36 cosponsors that are working their way through Congress. While these bills have support from a very large coalition of rail customers all across the country, no action has yet been taken in this Congress on the bills specifically. Terry also mentioned two Rail Antitrust Bills including HR 3318 with seven cosponsors and S 3612 which has just been introduced. These bills address lifting the antitrust immunity of railroads. Another bill is S 3742 which is a Rail Infrastructure Bill with nine cosponsors. A letter was received from Charles Clark, Special Representative to the President UPRR, Idaho and Montana, addressed to the RSCC requesting support for this bill. Senator Baucus (Ranking Member of the Senate Finance Committee – committee of jurisdiction) is aware of this bill and wants to make sure it would benefit rail service everywhere, not just in high population areas or on just specific routes. The Montana Congressional delegation wants this bill, if passed, to have significant application for use by Montana rail customers, the RSCC, and Montana shortlines in the pursuit of Montana commerce. This bill is significant in the sense that this is the first time in the over 100 years that railroads have come to Congress looking for financial support. The railroads are also coming to Congress at a time when the nation's railroads are showing record profits and continuing capacity shortages.

5.0 Develop Plan as per HB 769 2(b) “develop a comprehensive and coordinated plan to increase rail service competition in Montana.”

Evan Barrett requested this agenda item to emphasize the RSCC's responsibility in developing a plan for Montana's legislature. He postulated that the plan does not have to be completed by the time the legislature meets in January of 2007 because the RSCC is a permanent body and is just in its first year of operation, but the Council needs to act expeditiously and as thoroughly as possible. The idea is to get the plan done, but be sure to do it right.

Evan mentioned that there was funding for FY 2007 that would allow a Request for Proposal to be issued to prepare the plan. Terry's information and work will establish the planks to be used in preparing the plan. Whiteside & Associates will provide assistance to those preparing a plan. Terry and Evan expect the Council will be ready to issue the RFP by the end of this year.

Rep. Tom McGillvray agreed that the plan need not be completed by January, but noted he needs to make a report to the Economic Affairs Committee on September 11th as to the progress of the RSCC. Terry Whiteside or Mike O'Hara may be available to assist Tom with the report.

Sen. Ken Hansen noted that the survey project would be a step forward; Sen. Hansen said the Legislature tends to dislike surveys so the Council must explain the need for the survey and report progress on action items and plans.

6.0 Administrative Update – MEDS

Gloria O'Rourke thanked the Council for the opportunity to work with them. A listserv is in place to inform the general public and interested groups of the RSCC's activities. Whiteside and Associates powerpoint file will be placed on the website at <http://www.rscclt.gov> along with the minutes of this meeting.

7.0 Legislative Update - Potential State Legislative Activity (Evan Barrett)

7.1 Location of Council and Terms of Council Members

In the RSCC statute, terms were not listed for Council members. In the next session, Evan suggested the statute be amended to indicate revolving terms and phase them in as is typically done. Further, he said that the Governor's Office would like legislation in which the Council is transferred to the Department of Transportation for administrative support. He indicated that the Governor's Office generally likes to have these functions with a department rather than the Governor's Office. This change would not alter the nature of the council except the attachment for administrative assistance.

Both changes could be made within the same bill.

7.2 Continuing appropriation for administration

Evan noted RSCC appropriations were in the bill itself when it was passed. For future reference, the appropriation language in that bill becomes archaic after this cycle. Evan will talk with Budget Director David Ewer to see about placing RSCC appropriations into HB 2 so funding becomes a continuing obligation of state government. The council needs to determine between now and the budget deadline of November 15th if the figure of \$50,000 per year is sufficient.

Rep. McGillvray suggested adding a council member with coal shipping expertise so that coal shipping issues may be addressed as well. Evan said they would take that under consideration.

8.0 Rail Updates

8.1 Union Pacific (Evan Barrett)

Because of the importance of UP operations in the area and upon the request of the local legislative delegation, Butte Silver Bow local government and the Port of Montana, Governor Schweitzer called UP President James Young and had a conversation with him regarding UP continuing to serve the Port of Montana. As a result of that conversation, UP indicated they will continue to maintain service in Montana for the time being.

Evan handed out a letter from Charlie Clark of UP that was sent to George Paul of the Port of Montana discussing a meeting held in Butte about a week ago. The letter indicated UP will continue to work with the Port of Montana in Butte and requested the Council's support for Senate Bill 3742 (see 4.4 above.) This bill would provide tax incentives and other changes for both railroads and rail shippers to encourage further investment in rail facilities. Charlie Clark's letter also included an article from the Montana Standard announcing UP's decision to serving Montana.

George Paul thanked the Governor and the Governor's Office of Economic Development, the entire Butte legislative delegation as well as the Council for actively supporting the Port of Montana and becoming involved in the UP issue. George said UP expressed great appreciation for the collective message they received: Montana wants UP to remain in Montana. The Port of Montana is moving forward and developing a strategy to create more business opportunities for the area.

8.2 Canadian Pacific (Larry Bonderud)

Larry Bonderud reported that CP is alive and well with \$254 million in last quarter earning reports. There are plans to improve the facilities at Cou tts in Alberta. There are no plans for the interchange between CP and the BNSF line from Lethbridge to the south other than routine maintenance. Units are being held in Shelby as BNSF tries to work out the interchange. Larry reported more products are coming down than going north.

8.3 Montana Rail Link (Evan Barrett)

8.4 BNSF Railway (Barbara Ranf)

Barbara Ranf began her BNSF report with the results of public meetings held in Wolf Point, Havre and Great Falls. Barbara said BNSF received good feedback and is planning additional forums. BNSF needs to build understanding with agriculture producers and improve communications.

Regarding the status of the Great Falls to Helena rail and based on a study conducted in 2005 that indicated the potential for Canadian traffic in the future, BNSF decided to not abandon that section of rail at this time.

BNSF has committed to work with the STB regarding the fuel charge hearing. Barbara offered to present a formal presentation the issue in the future.

Due to resurgence in the use of rail, Barbara shared the following statistics:

- Freight transportation demand expected to double by 2025 with trans-pacific trading to triple. Fourteen million containers are now on the west coast which will grow to 84 million containers by 2025.
- Western coal production may grow from 450 million tons to 900 million tons.
- In Montana, 3,677 cars were used to ship agricultural products in the first quarter of 2005. In the first quarter of 2006, the number has grown to 5,646 carloads.
- BNSF has experienced a 144% increase cost in fuel since 2001.
- \$2.6 billion is being invested in network improvements and new locomotives
- In 1995 BNSF had 7 million unit cars and now have 10 million unit cars
- BNSF added about 150 coal trains in the last decade
- A joint venture with UP in Wyoming where \$100 million is being spent to construct additional tracks to handle coal transport
- BNSF employs 2,200 people in Montana with a payroll of 106 million, plus benefits.

Discussion:

Sen. Ken Hansen expressed concern, talking about the Helena-Great Falls rail line, for the Rails to Trails program as once the rails are gone, they are not brought back.

Evan asked Barbara to take back to her superiors that even though a line may not be abandoned, the track is often allowed to deteriorate and it eventually leads to a *de facto* abandonment. The entire length of the line needs to be maintained during extended periods of inactivity.

Questions were asked regarding BNSF plans to invest in additional track and why cooperatives are required to purchase cars. Barbara will investigate these questions and report back to the Council.

Larry Bonderud described a vision in which BNSF and UP would foster a cooperative relationship which would allow for mutual investments in infrastructure to sustain railroads and pay for improvements. Working together, railroad companies could build joint ventures and build mutual best interests. This joint approach has already been successful in Wyoming, Seattle to Los Angeles, etc. At some points railroads even have common dispatchers.

RSCC members agreed this vision is not out of the realm of possibility and that RSCC could be a facilitator for this kind of communication. The item will be placed on the next RSCC meeting agenda.

Nothing new to report at this time.

Evan pointed out that the railroads are potential customers for diesel made from coal; UP is the largest diesel consumer in the nation with BNSF not far behind. If the proper off take agreements from coal to liquid plants could be arranged, there is great potential for railroads to be strong customers.

8.5 Central Montana Railroad (Carla Allen)

Carla Allen reported the CM rail has been busy as a good harvest means good business. Car loadings are up, the rail contract business continues to do well, i.e., the Charlie Russell Choo Choo. CMR is currently working on economic development projects and is in contact with the American Short Line Association to explore taking advantage of tax credits to short lines. CM, as well as 24 other small rail lines, do not fit the mold for those tax credits as they are non-profit. One option is to allow marketability of tax credits.

8.6 Watco, Yellowstone, Mission Valley, others (Steve Sheldon)

Steve Sheldon reported no additional updates since the last RSCC meeting. The status of the Scobey line remains the same and is still out of service. There has been no word regarding a steering committee as was discussed in the Scobey meeting eight months before.

9.0 Next Council Meeting

9.1 Meeting Date and Location

Port of Montana is inviting the RSCC to meet in Butte. The date that worked best for everyone is September 27th.

9.2 Agenda

Items identified for the next meeting include:

- RSCC serving as a facilitator to foster cooperative relationships between railroads
- Taxation subcommittee update
- Budget of \$50,000 adequate for RSCC?
- Transportation subcommittee update
- Letter from Dr. Daniel Fiehrer regarding abandoned line between Great Falls and Helena
- Update on September 11th Interim Committee presentation

10.0 Comments or Issues from Council Members

Chairman O'Hara requested a reversal of agenda item 10.0 and 11.0.

Evan Barrett described the potential for a branch line from the Bull Mountain Mine south of Roundup to Broadview to hook on to the BN line. The Bull Mountain Mine's active under ground coal mine is moving coal by truck to Lockwood and then on to rail – which is a very expensive process. Contract negotiations are in progress and look favorable in terms of both the rail and the contract coal sales. Due to the foreseen increase in coal sales, it is expected construction will begin on a line.

A suggestion was made by Rep. Tom McGillvray for Chairman O'Hara to write a letter to Bull Mountain Energy to offer encouragement and support as needed to facilitate the line construction process. Evan Barrett motioned, Russell Hobbs seconded, motion passed unanimously.

Evan provided background information and an update on the Otter Creek tracts. The Otter Creek tracts were deeded to the state from the federal government as part of a *quid pro quo* for the New World Mine near Yellowstone Park to give up rights to develop gold there due to concerns of acid drainage into the park. As an outcome, the State of Montana received large tracts of coal from the US Government. Great Northern Properties, a private company, shares in the tracts in a checkerboard ownership. The state has a cooperative agreement with Great Northern Properties on the development of the tracts and also an agreement with the Northern Cheyenne tribe on labor issues and several other items regarding the development of the Otter Creek tracts. As a co-developer with Great Northern Properties and due to the checkerboard layout, development will have to move forward working together.

At a recent Land Board meeting, the Land Board received pressure to put Otter Creek coal up for bid. Great Northern Properties said they were not ready to do that as the coal would be devalued as the rail is not in place or looking “real.” Because the coal is in is the School Trust, the state is obligated by the Constitution to maximize the return for the schools of Montana. Thus the state must consider the value issues brought forth by Great Northern Properties. According to Great Northern Properties, the situation is on at least a six month holding pattern. The Tongue River Rail has been proposed for about 20 years and would run from Miles City, through Otter Creek into Decker and hook into BNSF. There is a concern that the route may not flow coal out of Montana but open a way to move Wyoming coal on a shorter route to market through Montana. BNSF has said they would not do this, but it remains a concern to some. The railroad appears to be permitted by STB for the northern part of the route while the southern half of the route is still pending.

Evan said a representative from the Laborers Union came forth and presented a scenario dealing with a different rail developer. This plan would develop a route from Otter Creek to the south and not connect to Miles City (called the Otter Creek South Railroad) and move Montana coal from Otter Creek through Wyoming. That would eliminate any danger of benefiting Wyoming coal over Montana’s coal.

There are many complexities in the issue but a lot of interest and ongoing discussion.

A comment made from the audience was that there are about 16 port authorities in the state that could own their own railroads and could be used to facilitate rail support and collaboration.

11.0 Formal Public Comment Period

While there was several comments from the public during the meeting, there were no additional comments from the public at this time.

12.0 Adjournment

Larry Bonderud and Lorette Carter were thanked for hosting the RSCC meeting.

Gloria will send travel vouchers to the RSCC members.

Evan moved to adjourn the meeting; Larry Bonderud seconded, motion passed.

RSCC members toured the Port of Northern Montana facilities after the meeting.



Rail Service Competition Council
Governor's Office of Economic Development
P.O. Box 200801 Helena, MT 59620-0801
Ph: 406.444.5470 <http://rscclt.gov>



April 17, 2006

W. Douglas Buttrey
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Dear Surface Transportation Board;

We, the members of the Montana Rail Service Competition Council, would like to formally express our concerns on the abandonment proceedings of the Moore to Lewistown Rail line by BNSF. Our concern is with the ever decreasing rail infrastructure in the State of Montana. The abandonment proceeding could very well end in the removal of that line. Once rail infrastructure is removed, it is highly unlikely that it will ever be replaced. The Rail Service Competition Council would like to see that line acquired by a short line operator, such as Montana Rail Link or Central Montana Rail.

The State of Montana has actively been pursuing the development of a biofuels and light manufacturing sector. Rail infrastructure is crucial to both of these industries, and thus the loss of rail infrastructure can only hurt the Montana economy.

Sincerely,

Mike O'Hara, Chairman
Rail Service Competition Council

Cc: Governor Schweitzer, Evan Barrett, RSCC Members



Rail Service Competition Council
Governor's Office of Economic Development
P.O. Box 200801 Helena, MT 59620-0801
Ph: 406.444.5470 <http://rsccl.mt.gov>



April 19, 2006

Mr. James R. Young
President & Chief Executive Officer
Union Pacific Corporation
1400 Douglas Street
Omaha, NE 68179

Dear Mr. Young,

I am the Chairman of the Montana Rail Service Competition Council which the Montana Legislature and Governor Schweitzer created in 2005 to address the significant problems resulting from the dominance of one Class I railroad in Montana. Businesses throughout Montana are working very hard to expand and grow profitably. We must ensure they have competitive rail services now and in the future.

Based on the Council's initial analysis and discussions, it is very obvious that continued Union Pacific Railroad service to Montana is an important factor in efforts to preserve and possibly expand Class I rail competition in Montana. This service, which the Union Pacific Railroad and its predecessors have provided since 1881, is a shining example of the benefits of Class I rail competition for Montana shippers. By providing direct rail service to the Port of Montana, the Scouler Grain Facility and the Silicon Mountain Technology Park, the Union Pacific Railroad supports the economy of Southwestern Montana and provides an important competitive option for shippers throughout Montana and the surrounding area.

Because of the importance of Union Pacific Railroad service to Montana, the Rail Service Competition Council asked me to express the Council's strong support for the continuation of your services. The Council is also willing to assist you in any discussions or help you need to ensure the future of Union Pacific Railroad service to Montana. Please contact me at (406)734-5434 to discuss your services or any suggestions you may have for us. Thank you.

Sincerely,

Michael O'Hara, Chairman
Montana Rail Service Competition Council

copies: Governor Brian Schweitzer
Evan Barrett, Chief Business Development Officer
Council Members